IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 394 OF 2004

Sureshchandra Mahavirprasad Mantri ...Petitioner

Versus

Chandrarekha Mantri ...Respondent

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Mr. Bharat Vaishnawa i/b M/s. Bharat Vaishnawa & Co. counsel for Petitioner

Mr. M.P. Rao with Mr. Ashish Kamat i/b M/s. Crawford Bayley & Co.counsel for Respondent.

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CORAM: B. H. MARLAPALLE, J.

DATED: 20TH JANUARY, 2005

P.C.:-

1. Heard Mr. Vaishnawa, the learned counsel for the petitioner and Mr. Rao the learned counsel for the respondent.

2. The only prayer which falls for consideration in this Contempt petition reads as under:-

> "Order dated 9.10.1995 passed by His Lordship Mr. Justice A.V. Savant in Contempt Petition No. 261 of 1995 whereby the Respondent was restrained from entering into or remaining in the portion of the flat marked in green colour

boundary, as more particularly shown in Exhibit A hereto, and this Hon'ble Court may be pleased to commit the Respondent to Civil Prison for a period of six months, and attach her property".

3. It is contended that the portion marked in green colour at Exh.A to the petition memo is in possession of the petitioner and the portion marked in red colour was with the Court Receiver but has been occupied by the respondent. While she was occupying the same portion, she broke open the partition wall and made an access to the portion in possession of the petitioner and thus she committed breach of the order passed by this Court on 9.10.1995 in Contempt Petition No. 261 of 1995. It appears that at the request of the petitioner the Court Receiver made a surprise visit to the said premises on 22.8.2003 and noted that the partition wall was broken at two places and the respondent had an access to the portion in possession of the petitioner.

4. If the petitioner had come to know for the first time on 19.8.2003 that the respondent had broken open the partition wall and the Court Receiver visited and submitted his report on 22.8.2003, it was necessary for the petitioner to move the Contempt Petition on or before 21.8.2004 in view of the limitation of one

year as set out under Section 20 of the Contempt of Courts Act, 1971. This Contempt Petition has been admittedly filed before this Court on 17.10.2004 and it is contended by the learned counsel for the petitioner that initially the Civil Application was moved in Contempt Petition No. 261 of 1995 and when it was not entertained the Contempt Petition was filed afresh. This explanation would not suffice to hold that the Contempt Petition has been moved within the period of limitation of one year.

5. Even otherwise as per the report submitted by the Court Receiver and it is brought on record at Exh.N, it is clear that the respondent had taken a stand that the portion marked in green colour was occupied by her grand mother Smt. Krishnabai Mantri and she was visiting her and had occupied the entire premises. Krishnabai Mantri died on 2.1.1997 and thereafter, the petitioner deleted her name from the title of the subject property. In the proceedings pending before the lower court as well as this Court, it appears that the respondent has taken a specific plea that she occupied the portion of the house with the permission of her grand mother. In the affidavit in reply filed it has also been submitted that the broken portion were closed and original position of partition wall came to be restored. This intimation was given to the Court Receiver vide letter dated

13.7.2004 addressed by the respondent herself. The petitioner is the paternal uncle (father's brother) of the respondent and there appears to be a chain of litigation initiated against her.

6. There is no case made out to take cognizance of the petition in addition to the fact that it has not been filed within the limitation of one year. The petition is, therefore, rejected summarily.